DRN-4802388

The complaint

Mr M has complained that Western Circle Ltd trading as Quick Loans Express ("Quick Loans") didn't carry out sufficient affordability checks before it lent to him.

What happened

A summary of Mr M's borrowing can be found below.

loan number	loan amount	agreement date	repayment date	number of monthly instalments	largest repayment
1	£400.00	30/05/2022	30/09/2022	4	£159.45
2	£500.00	02/10/2022	25/02/2023	6	£141.95

Quick Loans wrote to Mr M with a final response letter and explained why it didn't consider an error had been made by providing the loans. Unhappy with the response, Mr M referred the complaint to the Financial Ombudsman.

The complaint was then considered by an investigator, and she didn't uphold the complaint about loan 1. However, she did uphold the complaint about loan 2 because the credit check results showed Quick Loans that Mr M already had three outstanding payday loans and there had been several missed or late payments recorded on one of his accounts. Because of this, the investigator thought that Quick Loans ought to have carried out further checks before lending. Had it done so, it would've discovered that firstly Mr M's credit commitments were greater than his income and secondly, he was sending funds to a second account which Mr M was used for gambling.

Mr M agreed with the investigator's outcome, but Quick Loans didn't agree with the assessment and asked for a final decision. As no agreement could be reached the complaint has been passed to me to decide.

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

We've set out our general approach to complaints about short-term lending - including all the relevant rules, guidance and good industry practice - on our website.

Quick Loans had to assess the lending to check if Mr M could afford to pay back the amounts he'd borrowed without undue difficulty. It needed to do this in a way which was proportionate to the circumstances. Quick Loans' checks could have taken into account a number of different things, such as how much was being lent, the size of the repayments, and Mr M's income and expenditure.

With this in mind, I think in the early stages of a lending relationship, less thorough checks might have been proportionate. But certain factors might suggest Quick Loans should have done more to establish that any lending was sustainable for Mr M. These factors include:

- Mr M having a low income (reflecting that it could be more difficult to make any loan repayments to a given loan amount from a lower level of income);
- The amounts to be repaid being especially high (reflecting that it could be more difficult to meet a higher repayment from a particular level of income);
- Mr M having a large number of loans and/or having these loans over a long period of time (reflecting the risk that repeated refinancing may signal that the borrowing had become, or was becoming, unsustainable);
- Mr M coming back for loans shortly after previous borrowing had been repaid (also suggestive of the borrowing becoming unsustainable).

There may even come a point where the lending history and pattern of lending itself clearly demonstrates that the lending was unsustainable for Mr M. The investigator didn't think this applied to Mr M's complaint and I would agree, as there were only two loans.

Quick Loans was required to establish whether Mr M could *sustainably* repay the loans – not just whether he technically had enough money to make his repayments. Having enough money to make the repayments could of course be an indicator that Mr M was able to repay his loans sustainably. But it doesn't automatically follow that this is the case.

I've considered all the arguments, evidence and information provided in this context, and thought about what this means for Mr M's complaint.

Mr M, and Quick Loans, agreed with the investigator's findings about loan 1. To me, loan 1 is no longer in dispute and so I've not considered this any further. Instead, this decision focuses on whether Quick Loans did all it needed to do before it granted loan 2.

Before the second loan was approved, Quick Loans took details of Mr M's income and expenditure. Quick Loans recorded Mr M worked full time and received a monthly salary of £2,100. Quick Loans also requested a copy of Mr M's payslip which demonstrated the declared income was accurate.

Quick Loans made enquiries about his living costs, which Mr M declared were £1,250 per month. It's worth saying here that Quick Loans says that it assessed Mr M's monthly expenditure using what is calls "*trigger values*" – taken from a well-known debt charity and these values take account of an applicant's job, location, homeowner status, to name a few. It also factored in details from the credit search results, which I'll comment on further below.

Having used these trigger values it estimated Mr M's monthly outgoings were likely to be around £1,562 and it was this figure which was used for Quick Loans' affordability assessment. There was still sufficient disposable income for Mr M to be able to afford the repayments.

Quick Loans also carried out a credit search and it has provided the Financial Ombudsman with a copy of the results it received from the credit reference agency. I want to add that, although Quick Loans carried out a search, there wasn't a regulatory requirement to do one, let alone one to a specific standard. But what Quick Loans couldn't do, is carry out a credit search and then not react to the information it received.

There were some historic defaults and a satisfied County Court Judgement, but I don't think these would've of been a concern given the time since they had been applied to Mr M's credit file. But there was other information Quick Loans needed to have considered.

Quick Loans was told that Mr M already had six active loan accounts of which at least two were categorised as payday loans. The cost of servicing these loans was nearly £1,000 per month. On top of this, Mr M had credit card debt of over £2,000 and an active mail order account.

So, there are clear signs in the information that Quick Loans received that Mr M was already spending around 50% of his income on servicing existing loan payments, before any other costs are considered. I do think this calls in to question the sustainability of advancing further loans to a consumer who is already spending a significant portion of his income on loan repayments.

Notwithstanding my concerns around the number of loans and the repayment amounts there were signs of financial difficulties. One of the loan accounts – which had been opened in March 2022 had entered arrears in both July and September 2022. Mr M had also closed a loan in July 2022 and that had also gone into arrears. So, on two different loan accounts Mr M had shown that he had recently had trouble making the repayments.

These adverse payment markers don't automatically mean that the loan was unsustainable or unaffordable for Mr M. But in my view, the adverse payment markers were recent enough to the loan application to have prompted Quick Loans to conduct further checks into Mr M's finances to make sure that he wasn't still having financial difficulties.

Quick Loans could've gone about doing this a number of ways, it could've asked for evidence of his outgoings, copy bank statements or any other documentation it felt it needed in order to conduct what I consider to be a proportionate check.

Mr M has provided copy of his bank statements in the months leading up to this loan being approved, so I think it's entirely fair and reasonable to review these to see what Quick Loans may have seen had it made better checks.

I have looked at Mr M's bank statements and had Quick Loans also looked at these, then it would've discovered that in the days before the second loan was advanced Mr M had taken two new payday loans totalling £750.

In addition, he was also making payments to 10 other loans the majority of which were payday loans. The cost to service all of these loans was close to his verified income. Of course, on top of the loan repayments he also had credit card payments, mail order payments and other living costs. So had Quick Loans conducted what I consider to be proportionate checks it would've likely discovered Mr M couldn't afford the repayments he was committed to making.

I am therefore upholding Mr M's complaint about loan 2 and I've set out below what it needs to do in order to put things right for him.

Putting things right

In deciding what redress Quick Loans should fairly pay in this case I've thought about what might have happened had it not lent loan 2, as I'm satisfied it ought to have. Clearly there are a great many possible, and all hypothetical, answers to that question.

For example, having been declined this lending Mr M may have simply left matters there, not attempting to obtain the funds from elsewhere – particularly as a relationship existed between them and this particular lender which they may not have had with others. If this wasn't a viable option, they may have looked to borrow the funds from a friend or relative – assuming that was even possible.

Or, they may have decided to approach a third-party lender with the same application, or indeed a different application (i.e. for more or less borrowing). But even if they had done that, the information that would have been available to such a lender and how they would (or ought to have) treated an application which may or may not have been the same is impossible to now accurately reconstruct. From what I've seen in this case, I certainly don't think I can fairly conclude there was a real and substantial chance that a new lender would have been able to lend to Mr M in a compliant way at this time.

Having thought about all of these possibilities, I'm not persuaded it would be fair or reasonable to conclude that Mr M would more likely than not have taken up any one of these options. So it wouldn't be fair to now reduce Quick Loans' liability in this case for what I'm satisfied it has done wrong and should put right.

Quick Loans shouldn't have given Mr M loan 2.

A. Quick Loans should add together the total of the repayments made by Mr M towards interest, fees and charges on loan 2.
B. Quick Loans should then calculate 8% simple interest* on the individual payments made by Mr M which were considered as part of "A", calculated from the date Mr M originally made the payments, to the date the complaint is settled.
C. Quick Loans should pay Mr M the total of "A" plus "B".
D. Quick Loans should remove any adverse information it has recorded on Mr M's credit file in relation to loan 2.

*HM Revenue & Customs requires Quick Loans to deduct tax from this interest. Quick Loans should give Mr M a certificate showing how much tax it has deducted, if he asks for one.

My final decision

For the reasons I've outlined above, I am upholding Mr M's complaint in part.

Western Circle Ltd trading as Quick Loans Express should put things right for Mr M as directed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 28 June 2024.

Robert Walker
Ombudsman